



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220720-0159]

RIN 0648-BL63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS issues this temporary rule to extend the expiration date of emergency measures implemented for the greater amberjack stock in the Gulf of Mexico (Gulf). As requested by the Gulf of Mexico Fishery Management Council (Council), NMFS published a temporary rule for emergency action on July 25, 2022, to modify the greater amberjack recreational fixed closed season for the 2022-2023 fishing year in the Gulf exclusive economic zone (EEZ) to be August 1 through 31, 2022, and November 1, 2022, through July 31, 2023 (open September 1, 2022, through October 31, 2022). The purpose of this rulemaking is to extend the measures implemented in the emergency action while the Council develops long term management measures to reduce overfishing of Gulf greater amberjack.

DATES: The expiration date for the temporary rule published at 87 FR 44027, July 25, 2022 is extended from January 23, 2023, through July 28, 2023, unless NMFS publishes a superseding document in the **Federal Register**.

ADDRESSES: Electronic copies of the documents in support of this temporary rule may be obtained from the NMFS Southeast Regional Office website at:

<https://www.fisheries.noaa.gov/action/emergency-action-modification-greater-amberjack-recreational-fixed-closed-season>.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, telephone: 727-824-5305 or email: *Kelli.ODonnell@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended

to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to end overfishing and rebuild overfished stocks. At its June 2022 meeting, in accordance with Section 305(c)(3) of the Magnuson-Stevens Act, the Council requested NMFS promulgate an emergency regulation to protect the greater amberjack resource, due to recently discovered circumstances which present serious conservation issues to the stock. NMFS promulgated that rule in July 2022, effective through January 23, 2023, and is now extending the effective date for an additional 186 days (87 FR 44027, July 25, 2022).

All weights provided in this temporary rule, unless otherwise noted, are given in round weight.

Current Status of Greater Amberjack Stock and Council

Emergency Action Request

Greater amberjack has been under a rebuilding plan since 2003. In October 2020, a Southeast Data, Assessment, and Review (SEDAR) assessment (SEDAR 70) was completed and showed that the greater amberjack stock is still overfished and has been undergoing overfishing almost continuously since 1980. NMFS informed the Council of these determinations in a letter dated April 7, 2021. The Magnuson-Stevens Act specifies that the Council must

prepare and implement measures to end overfishing and rebuild the stock within 2 years of this notification. At its October 2022 meeting, the Council approved Amendment 54 to the FMP, which would significantly reduce the greater amberjack catch limits consistent with the results of SEDAR 70 and the recommendation of the Council's Scientific and Statistical Committee (SSC).

The Council's SSC reviewed the SEDAR 70 results at its January 2021 meeting, accepted the assessment as the best scientific information available, and agreed that greater amberjack was still overfished and undergoing overfishing. The SSC provided recommendations for a reduced overfishing limit (OFL) and acceptable biological catch (ABC) so that the stock could rebuild by 2027, the current target rebuilding time. The Council discussed the SSC's recommendations at its January 2021 meeting and instructed staff to begin work on an FMP amendment (Amendment 54) to update the rebuilding plan and end overfishing of greater amberjack.

The SSC provided updated catch level recommendations in November 2021. When the Council reviewed more detailed alternative catch level projections in April 2022, it became clear that because the recreational fishing year occurs over 2 calendar years and the reduced catch levels in Amendment 54 would not be implemented until the later part of the fishing year, more immediate action might be

necessary to constrain recreational harvest while the Council works to finalize the new catch limits. Therefore, in June 2022, the Council reviewed options to modify the recreational fixed closed season to help constrain harvest to the reduced catch levels under consideration in Amendment 54.

At that time, recreational harvest of greater amberjack was closed from November through April and June through July. This means that harvest was allowed during the months of August through October, and the month of May. The Council requested that NMFS modify the fixed closed season for the 2022-2023 fishing year so that harvest is allowed only during the months of September and October in 2022. NMFS received the Council request in a letter dated July 5, 2022, and implemented the emergency regulation on July 25, 2022, consistent with the Council request (87 FR 44027, July 25, 2022). That rule is currently effective through January 23, 2023. NMFS is extending the effective date of that rule to prohibit harvest in May 2023 as requested by the Council and to allow NMFS sufficient time to review, and if approved, implement Amendment 54.

Comments and Responses

Section 305(c)(3)(B) of the Magnuson-Stevens Act allows NMFS to extend the effective date of an emergency regulation if the public is provided the opportunity to comment on the emergency regulation and the Council is

actively preparing a plan amendment to address the emergency on a permanent basis. NMFS solicited public comment in the July 25, 2022, temporary rule, noting that the rule could be extended for an additional 186 days.

NMFS received five comments on the temporary rule for emergency action for Gulf greater amberjack. In general, the comments were opposed to the change to the recreational fishing season implemented in the temporary rule and stated other measures could be taken or that no action was necessary. Some comments suggested changes to management measures that are outside the scope of the temporary rule, such as implementing a tag program for non-residents, and are therefore not addressed further. Specific comments related to the emergency action are grouped by topic and summarized below, followed by NMFS' respective responses.

Comment 1: The data used to project greater amberjack recreational landings are flawed.

Response: NMFS used the best scientific information available to project when Gulf greater amberjack landings would reach the reduced recreational catch limits under consideration in Amendment 54. NMFS determined that recreational landings in recent years would be the best predictor of future landings. Therefore, NMFS used recreational landings data for the 2019-2020, 2020-2021, and 2021-2022 fishing years that were generated by the Marine Recreational Information Program, the Texas Parks

and Wildlife Department Creel Survey, the Louisiana Creel survey, and the NMFS Headboat Survey. The NMFS Southeast Fisheries Science Center and Southeast Regional Office reviewed these data and made applicable adjustments to recreational landings projections consistent with established protocols. To predict recreational landings in August, September, and October of 2022, NMFS used a 3-year average of monthly landings from 2019, 2020, and 2021. To predict recreational landings for May of 2023, NMFS used a 2-year average of 2020 and 2021 May landings because the recreational sector was closed in May 2019 and the May 2022 recreational landings were not available at the time of the analysis. The Council used these projections to determine how best to modify the recreational fixed closed and chose the alternative that provides the greatest number of days without exceeding the expected reduced recreational catch limit.

Comment 2: NMFS should implement a one fish per vessel recreational limit instead of changing the greater amberjack recreational fixed closed season.

Response: The Council did not request, and NMFS did not consider implementing a recreational vessel limit to reduce recreational landings. Previous analysis conducted for Amendment 35 to the FMP indicated that a one fish per vessel limit would not have achieved the harvest reduction needed to avoid an overage of the recreational catch limits

proposed under Amendment 54. Further, when recreational vessel limits, in general, have been considered in the past there has been little support from the Council and constituents. Therefore, NMFS implemented the revised recreational fixed closed season, which was supported by the Council and projected to meet the needed harvest reductions.

Comment 3: The greater amberjack commercial sector should be closed in addition to the recreational sector.

Response: NMFS disagrees that it is necessary to close the commercial sector. The commercial sector already has a fixed closed season in effect for the months of March, April, and May, and has projected that harvest by the commercial sector in January and February of 2023 would not exceed any of the proposed reduced commercial catch limits under consideration in Amendment 54. Further, the commercial sector has a trip limit reduction after 75 percent of the commercial quota is caught. Therefore, the Council did not include in its emergency action request to NMFS actions related to the greater amberjack commercial sector.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator (AA) for Fisheries, NOAA has determined that this emergency action is consistent with the Magnuson-

Stevens Act, the FMP, and other applicable law. This action is being taken pursuant to the emergency provisions of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

This temporary rule for emergency action contains no information collection requirements under the Paperwork Reduction Act of 1995.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

NMFS prepared an environmental assessment (EA) for the emergency measures contained in the July 25, 2022 (87 FR 44027, July 25, 2022) temporary rule. The EA analyzed the impacts of recreational seasonal closure, which includes the impacts related to extending the emergency measures. Therefore, the impacts of extending the emergency measures through this temporary rule have already been considered. Electronic copies of the EA are available from NMFS (see **ADDRESSES**) .

This temporary rule extension responds to the best scientific information available. The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment, pursuant to the authority

set forth in 5 U.S.C. 553(b) (B), as such procedures for this temporary rule extension are unnecessary and contrary the public interest. Such procedures are unnecessary because NMFS already published the temporary rule on July 25, 2022, and requested public comment on the emergency regulation, including the potential extension. NMFS responds to the public comments in this temporary rule, which extends the same emergency regulation for an additional 186 days. An opportunity for additional public comment would be contrary to the public interest because it would result in this temporary rule not being effective before the current emergency regulations expire, which would prevent NMFS from implementing this extension. Without the extension of the emergency regulation, recreational fishing would be allowed in May 2023 and could result in a significant overage of the greater amberjack recreational ACL approved by the Council in Amendment 54. This possible overharvest could result in a complete closure of greater amberjack to the recreational sector in the 2023-2024 fishing year and could negatively impact the revised rebuilding plan developed in Amendment 54.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 13, 2022.

Andrew James Strelcheck

Acting Deputy Assistant Administrator for Regulatory
Programs,

National Marine Fisheries Service.

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